

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT GEORGIA  
ATLANTA DIVISION**

In re:	)	
	)	
CWI CHEROKEE LF LLC,	)	Case No. 23-52262-SMS
	)	
Debtor.	)	Chapter 11

**PRELIMINARY OBJECTION TO SALE AND MOTION TO EXTEND OBJECTION  
DEADLINE AND HEARING DATE IN COURT’S *ORDER ON DEBTOR’S MOTION TO  
SELL ASSETS FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES,  
DIRECTING BIDDING PROCEDURES, AND SETTING PRELIMINARY  
AND FINAL HEARINGS [DOC. 107]***

The Solid Waste Disposal Authority of Muscle Shoals, Sheffield, and Tuscumbia, Alabama (the “Authority”), out of an abundance of caution, raises its preliminary objections to the proposed sale of the Debtor’s assets and respectfully requests that this Court enter an Order (a) extending the August 9, 2023 deadline for objections to proposed sale of the “Subject Assets” and (b) continuing generally the August 14, 2023 “Final Sale Hearing,” as defined and set out in this Court’s May 31, 2023 *Order On Debtor’s Motion To Sell Assets Free And Clear Of Liens, Claims, And Encumbrances, Directing Bidding Procedures, And Setting Preliminary And Final Hearings [Doc. 107]* (the “Sale Procedures Order”), and further states as follows:

Procedural Background

1. On May 9, 2023, the Debtor filed an *Amended Motion To Sell Assets Free And Clear Of Liens, Claims And Encumbrances And For (A) An Order And Notice (I) Directing Bidding Procedures Subject To Objection, (II) Setting Preliminary Hearing In Event Of Objection To Bidding Procedures, And (III) Setting Final Sale Hearing, And (B) An Order At Final Sale Hearing Approving Sale Free And Clear [Doc. 94]* (the “Sale Motion”).

2. On May 11, 2023, this Court entered an *Order And Notice On Debtor's Motion To Sell Assets Free And Clear Of Liens, Claims, And Encumbrances, Directing Bidding Procedures, And Setting Preliminary And Final Hearings* [Doc. 95] (the "Sale Procedures Objection Deadline Order").

3. The Sale Procedures Objection Deadline Order provided that parties with objections to the "Bidding Procedures" (as defined therein) must file an objection no later than May 29, 2023. (Sale Procedures Objection Deadline Order p. 15).

4. On May 29, 2023, the Authority timely filed a *Limited Objection To The Bidding Procedures Set Out In The Court's Order And Notice On Debtor's Motion To Sell Assets Free And Clear Of Liens, Claims, And Encumbrances, Directing Bidding Procedures, And Setting Preliminary And Final Hearings* [Doc. 95] [Doc. 106] (the "Limited Objection").

5. After a hearing on the proposed Bidding Procedures and Limited Objection, the Court entered the Sale Procedures Order.

6. The Sale Procedures Order provides that "all parties' rights and objections to a sale proposed by the Debtor for approval pursuant to this Order are reserved." (Sale Procedures Order, p. 16).

7. The Sale Procedures Order further provides:

- a. If two "Qualified Bids" were received, an "Auction" (as defined in the Order) would be held on August 7, 2023. (pp. 8-9).
- b. At the conclusion of the bidding, Debtor would announce its determination, subject to the consent of the Bond Trustee which consent shall not be unreasonably withheld, as to the bidder (the "Successful Bidder") submitting the highest and best bid for the Subject Assets (the "Successful Bid"). (p. 10).
- c. Any party with any objections to the proposed sale of the Subject Assets on the terms set forth herein shall file a written objection with the Court, on or before August 9, 2023 at 5:00 p.m. EDT.

- d. . . a Final Hearing related to the proposed sale of the Subject Assets, as described in the Bidding Procedures, shall be held in Courtroom 1201, United States Courthouse, 75 Ted Turner Drive SW, Atlanta, Georgia 30303, on the 14th day of August, 2023, at 11:00 A.M. (the “Final Sale Hearing”).

8. Upon information and belief, these provisions collectively meant that the Debtor would have provided notice to all parties in interest of the Successful Bidder and terms of the Successful Bid no later than August 7, 2023, with objections by parties in interest due no later than August 9, 2023. These original procedures and deadlines gave parties in interest at least two days to preview the Successful Bid and make any objections.

9. Pursuant to the Sale Procedures Order, on July 11, 2023, the Authority filed its *Notice of Cure Amount By The Solid Waste Disposal Authority Of Muscle Shoals, Sheffield, And Tuscumbia, Alabama* [Doc. 130] (the “Authority Cure Notice”).

#### **Motion to Extend Deadlines and Continue Hearing**

10. As this Court knows, (a) the Authority owns and leases to the Debtor pursuant to that certain *Lease Agreement* dated June 23, 2020 (the “Lease”), among other things, an industrial waste facility more commonly known as the Cherokee Industrial Landfill, located at 1750 Cane Creek Road, Cherokee, Alabama 35616 (the “Landfill”), said Landfill which is currently shut down pursuant to a February 27, 2023 *Cease and Desist Order* issued against the Debtor and the Landfill by the Alabama Department of Environmental Management (“ADEM”); (b) the Authority owns and holds the ADEM *Solid Waste Disposal Facilities Permit No. 17-10* (the “Solid Waste Permit”) that authorizes the operation of the Landfill; (c) the Authority has spent several hundred thousands of dollars since the petition date remediating leachate at the Landfill and the Debtor has spent \$0 for the same; and (d) the Landfill remains closed.

11. The identity of the Successful Bidder and the terms of the Successful Bid are critically important to the Authority and other parties in interest who may have objections to any proposed sale.

12. The Authority filed the Limited Objection to preserve all rights to challenge the terms of the sale of the Subject Assets.

13. The Authority files the instant motion to ensure that it has proper time to evaluate any Successful Bidder and Successful Bid and sale of the Subject Assets, and object if necessary.

14. The Authority respectfully requests that this Court clarify the Sale Procedures Order to provide that:

- a. The Debtor must file a notice identifying the Successful Bidder and Successful Bid and attach a copy of the asset purchase agreement (the “Successful Bid Notification”).
- b. Any parties in interest with objections to the Successful Bidder, the Successful Bid, the sale of the Subject Assets, or any other aspect or component of the sale and transaction contemplated by the Sale Motion, the 1<sup>st</sup> Sale Order, and the 2<sup>nd</sup> Order file said objections no later than three (3) business days after the Successful Bid Notification is filed by the Debtor.
- c. The Final Sale Hearing currently set for August 14, 2023 is continued indefinitely for the time being.

15. Upon information and belief, the Authority does not expect the Debtor to have any objections to the relief sought by this motion, and the Authority will consult with the Debtor (and UMB Bank N.A., the successor trustee of the two series of bonds issued by the Authority with respect to the Landfill) and submit a proposed Order.

#### **Preliminary Objection to Sale**

16. Out of an abundance of caution, the Authority raises its preliminary objections to any proposed sale.

17. As set forth in the Authority Cure Notice, as a condition to any proposed assumption or assignment, the Authority demands a cure of all non-monetary defaults and prompt payment to cure all monetary defaults under the Lease, Disposal Agreement, Environmental Indemnity Agreement, Indenture, any other agreement or contract, and under applicable law and equity. As of the date of filing the Authority Cure Notice, the cure amount due and owing to the Authority is at least \$2,824,618.92. These amounts continue to accrue.

18. Any assumption of the Lease or Disposal Agreement must include assumption of all indemnification obligations owing to the Authority, including contingent, unliquidated, or unknown obligations.

19. The Debtor has not identified any buyer that may seek to receive an assignment of the Lease or Disposal Agreement or any information to determine whether such buyer can provide adequate assurance of future performance.

20. The Authority reserves all rights, claims, defenses, and objections with respect to any proposed assignee, including without limitation with respect to whether the Authority must accept performance from an entity other than the Debtor under section 365(c).

21. Finally, for the avoidance of doubt, the Authority objects to any effort to sell or assign the Solid Waste Permit and reserves all rights, claims, defenses, and objections with respect to any proposed sale or assignment.

22. The Authority may have additional objections to any sale, and reserve the right to raise such objections once the Debtor identifies the Successful Bidder and the terms of the Successful Bid.

Respectfully submitted this the 9<sup>th</sup> day of August 2023.

/s/ Glenn E. Glover  
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Attorney for the Authority

**CERTIFICATE OF SERVICE**

I hereby certify that on August 9, 2023, I (a) electronically filed the foregoing with the Clerk of Court using the CM/ECF System which will send an electronic notification of such filing to all counsel of record and other participants in the Court's ECF filing system; (b) served a copy of the foregoing on counsel of record for the Debtor by emailing a copy to [jakins@swflp.com](mailto:jakins@swflp.com) and [jchristy@swflp.com](mailto:jchristy@swflp.com); and (c) served a copy of the foregoing on counsel of record for the United States Trustee by emailing a copy to [Alan.Hinderleider@usdoj.gov](mailto:Alan.Hinderleider@usdoj.gov).

/s/ Glenn E. Glover  
Attorney